

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WASHINGTON FEDERAL, MICHAEL
McCREDY BAKER and CITY OF
AUSTIN POLICE RETIREMENT
SYSTEM, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Case No. 13-cv-00385-MMS
(Judge Sweeney)

JOSEPH CACCIAPALLE and MELVIN
BAREISS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Case No. 13-cv-00466-MMS
(Judge Sweeney)

AMERICAN EUROPEAN INSURANCE
COMPANY, on behalf of itself and all
others similarly situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Case No. 13-cv-00496-MMS
(Judge Sweeney)

FRANCIS J. DENNIS, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Case No. 13-cv-00542-MMS
(Judge Sweeney)

BRYNDON FISHER and BRUCE REID,
derivatively on behalf of Federal National
Mortgage Association,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

and FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Nominal Defendant.

Case No. 13-cv-00608-MMS
(Judge Sweeney)

ERICK SHIPMON, derivatively on behalf
of Federal National Mortgage Association,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

and FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Nominal Defendant.

Case No. 13-cv-00672-MMS
(Judge Sweeney)

**PLAINTIFFS FISHER, REID AND SHIPMON'S RESPONSE
TO AMENDED JOINT MOTION
[OF PLAINTIFFS WASHINGTON FEDERAL, MICHAEL MCCREDY
BAKER, CITY OF AUSTIN POLICE RETIREMENT SYSTEM, JOSEPH
CACCIAPALLE, AND MELVIN BAREISS]
FOR
CONSOLIDATION, COORDINATION AND APPOINTMENT OF
INTERIM CO-LEAD COUNSEL**

Pursuant to Rules 7.1, 42, and 42.1 of the Rules of the United States Court of Federal Claims, plaintiffs Bryndon Fisher, Bruce Reid, and Erick Shipmon (collectively, the “Derivative Plaintiffs”) respond to the Amended Joint Motion for Consolidation, Coordination and Appointment of Interim Co-Lead Counsel (the “Amended Motion”) filed by plaintiffs Washington Federal, Michael McCredy Baker, City of Austin Police Retirement System, Joseph Cacciapalle, and Melvin Bareiss (together, the “Moving Parties”) on September 13, 2013. *Washington Federal* Dkt. #21; *Cacciapalle*, Dkt. #22.

In the Amended Motion, the Moving Parties sought, *inter alia*, consolidation of the following actions: *Cacciapalle, et al. v. United States*, No. 13-cv-00466, *American European Ins. Co. v. United States*, No. 13-cv-00496, and *Dennis v. United States*, No. 13-cv-00542 (collectively, the “Class Actions”) with *Fisher, et al. v. United States, et al.*, No. 13-cv-00608 and *Shipmon v. United States, et al.*, No. 13-cv-00672 (together, the “Derivative Actions”). In addition, the Moving Parties seek coordination of the Class Actions and the Derivative Actions with *Fairholme, et al. v. United States*, No. 13-cv-00465 (“*Fairholme*”) and *Washington Federal, et al. v. United States*, No. 13-cv-00385 (“*Washington Federal*”).

The Derivative Plaintiffs would have opposed the Moving Parties’ motion to the extent it sought consolidation of the Derivative Actions and the Class Actions into a single consolidated action and to the extent it sought to appoint the Moving Parties’ counsel as lead counsel for such a consolidated action. Derivative Plaintiffs would have done so because they believe that consolidation of the Class Actions and Derivative Actions would have been improper and inadvisable for numerous reasons.

Counsel for the Derivative Plaintiffs have conferred with counsel for the Moving Parties, and counsel for the Moving Parties have agreed to withdraw those portions of the Amended

Motion that sought consolidation of the Class Actions and the Derivative Actions into a single consolidated action and appointment of lead counsel for such a consolidated action.

The Derivative Plaintiffs' counsel has been advised that the Moving Parties will instead seek consolidation of the Class Actions (not including *Washington Federal*) as one action (the "*Cacciapalle* Consolidated Action") and coordination among the *Cacciapalle* Consolidated Action, the Derivative Actions, *Fairholme*, and *Washington Federal*. The Derivative Plaintiffs have also been advised that the Moving Parties will not seek appointment of counsel for the Class Actions as lead counsel for the Derivative Actions. The Derivative Plaintiffs understand that the Moving Parties will be filing a reply with respect to the Amended Motion that modifies the relief requested as described above.

In light of the modification of the Amended Motion as described above, the Derivative Plaintiffs do not oppose the remaining aspects of the Amended Motion. The Derivative Plaintiffs will be filing in the immediate future a motion to consolidate the Derivative Actions and for appointment of Lead Counsel in a Consolidated Derivative Action.

Respectfully submitted,

DATED: October 15, 2013

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/s/ Noah M. Schubert

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